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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/751,813

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Brinkley Sprunt

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06/07/2006

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EXAMINER

YIGDALL, MICHAEL J

ART UNIT

PAPER NUMBER

2192

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/751,813

Applicant(s)

SPRUNT ET AL.

Examiner

Michael J. Yigdoll

Art Unit

2192

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered ~~and an explanation of how the new or amended claims would be rejected is provided below or appended.~~  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,3,4,7-9,18,20,21 and 27-45.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11.

Applicant's arguments (remarks, page 11-14) have been fully considered but they are not persuasive.

As indicated in the final Office action mailed on March 17, 2006, the combined teachings of Larsen, Diepstraten and Dreyer would have suggested to one of ordinary skill in the art the claimed "second multiplexer coupled to the ESCR and the first multiplexer to mask, based on a second set of control signals from the ESCR, subclasses of the class of events in order to select an event that belongs to a subclass that is not masked." Applicant's response is that "none of the provided references disclose [this] particular feature of [the] claim, and therefore any combination of these references cannot disclose this feature" (remarks, page 14, first full paragraph). Specifically, Applicant contends that "as none of Larsen, Diepstraten or Dreyer individually disclose or suggest" the claimed feature, "any combination of Larsen, Diepstraten and Dreyer does not disclose or suggest this feature" (remarks, page 13, last paragraph).

However, this is not a persuasive argument against an obviousness rejection under 35 U.S.C. 103(a). One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981), and *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Rather, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art.

Here, Diepstraten discloses an event masker coupled to a control register to mask, based on a set of control signals from the control register, subclasses of the events in order to select an event that is not masked (see, for example, event mask register 90 in FIG. 3, and column 4, lines 42-50). The event mask register 90 is the event masker's control register (see, for example, column 12, lines 36-57). It is noted that Diepstraten does not expressly disclose that the event masker is implemented as a multiplexer; instead, Diepstraten's implementation is illustrated in FIG. 10, which shows an AND gate 580 and a control signal 558 from the event mask register 90 (see, for example, column 23, lines 37-47). Nonetheless, one of ordinary skill in the art would have recognized that the event masker could be implemented as a multiplexer whose selections are based on the control signals from the event mask register 90. Larsen suggests as much, disclosing multiplexers 82a and 82b that select events based on control signals from control registers 80 (see, for example, column 5, lines 30-36).

Applicant contends that "the description in Diepstraten of the functioning of the event mask register 90 is not the same as the functioning of the second multiplexer" as claimed (remarks, page 13, first full paragraph). However, the function of the claimed "second multiplexer" is to mask subclasses of events "in order to select an event that belongs to a subclass that is not masked." Indeed, Diepstraten discloses that the event masker "masks ones of the events to yield the at least some of the events" (column 4, lines 42-45). Applicant further contends that the multiplexers 82a and 82b of Larsen "only operate concurrently, or in parallel, on separate different threads in a multithreaded processor" (remarks, page 12, last paragraph). However, this is not evidence that a multiplexer is somehow unsuitable for implementing an event masker such as Diepstraten's.

Accordingly, the rejection of claims 1, 3, 4, 7-9, 18, 20, 21 and 27-45 under 35 U.S.C. 103(a) as being unpatentable over Larsen, Diepstraten and Dreyer is maintained.

MY



TUAN DAM  
SUPERVISORY PATENT EXAMINER